

DRAFT

AGENDA/TALKING POINTS FOR SEPTEMBER 19, 2013

MARYLAND WIP QUARTERLY CONFERENCE CALL WITH EPA

NOTE: The comments within quotation marks below are from the EPA INTERIM ASSESSMENT OF MARYLAND'S 2012-2013 MILESTONES AND WIP PROGRESS, dated 5/30/2013. To those comments are added a number of items (not in quotes) that the EPA team has identified for discussion. Following those items is a list of the three issues identified in Governor O'Malley's August 14 letter to Administrator McCarthy.

I. General

5/30/2013 Interim Assessment (IA): "For future progress runs starting in 2013, EPA encourages Maryland to clarify the source of Best Management Practices (BMP) data and distinguish actual increases in implementation from improved reporting of existing implementation when reporting annually to the Chesapeake Bay Program Office."

2014-2015: "As Maryland has recognized, consider milestones to increase the pace of nitrogen reductions. EPA expects milestones for nitrogen, phosphorus and sediment targets to be on track for achieving the goal of having practices in place by 2017 that would achieve 60% of the necessary load reductions compared to 2009."

II. Sectors

A. Agriculture

5/30/2013 IA: Improvements to Meet 2012-2013 Milestones and Maintain WIP Progress

1. **Verify self-reported practices:** "While it is commendable that Maryland uses farmer surveys to improve data quality, it will be important for the State to develop protocols starting in 2013 to verify that these self-reported practices are properly designed, installed, and maintained in order to meet forthcoming verification standards and improve reporting in future progress submissions."

Update 8/28: Dana York is working with MDA to develop an approach for identifying and verifying non-cost shared practices for credit towards the TMDL. They are working on defining the practices, proving that they are functionally equivalent to practices credited in the CBP Watershed model (in other words, they meet the nutrient/sediment reduction efficiencies even if they don't meet specific NRCS specs), and demonstrating how the data would be transmitted to CBPO.

Input from John Rhoderick on 9/9/2013: "Two comments."

a) the information on self reported practices is part of a Farms AIR submission to the state. This is a regulatory requirement and requires a farmer to sign that the document is correct. MDA follows up through our NMP inspection to confirm the information on the AIR's. Thus, It is incorrect to characterize this information as self reported practices . It falls under the higher " regulatory practice standards" of verification.

b) the requirements for following the new Bay Program verification principles do not apply to the 2013 progress data . That data was from 7/1/2012 to 6/30/2013. The verification standards have yet to be adopted (possible Dec 2013) and will apply to the 2014 and beyond data.”

2. **New BMPs and cutoffs:** “MDA and EPA will work to a) incorporate new agriculture BMPs into the Chesapeake Bay Program models for future progress runs such as manure incorporation and poultry litter treatment, and b) limit cutoff of BMPs in the 2013 progress run.”

Update 8/28: CBP Ag Workgroup is working on ways to address cutoffs.

Input from John Rhoderick on 9/9/2013:

“MDA , as a member of the AG workgroup , is unaware of any workgroup initiative to address cutoffs or work on the 8 new MD ag BMP's . To date no new subworkgroups have been formed and no recommendations for addressing cutoffs have been presented. I would be interested in some followup on the response statement on the sheet.”

- **Update 8/28: PMT regulations:** How will recent decision to pull the PMT regulations affect meeting 2012/2013 milestones and future milestones? More specifically we have the following questions:
 1. **When will NMPs be updated to reflect the new PMT?** If farmers are missing this NMP cycle to make changes in their operation to address the new PMT tool, will they be required to update their NMP once the regulations take effect? Or will they be allowed to wait until their plan expires (3 years)?
 2. **What are the implications of moving from High to Medium P soils with BMPs?** Our understanding from talking to Royden Powell earlier this month is that part of the “emergency regs changes” was that MDA would allow a farmer who got a HIGH rating from the PMT to put BMPs on his operation and re-run the PMT in hopes of getting a MEDIUM rating. Royden characterized this approach as a way to get farmers to start

implementing BMPs that address high P soils. The big question is what farmers are allowed to do on high P soils + BMPs.

3. **How can we help MD farmers transition to improved poultry litter management on high P soils?** Who will this affect, what practices/BMPs will they need to employ, what financial support can EPA provide to help farmers transition (CBRAP, CBIG, Innovative Nutrient and Sediment Reduction Program)? Are there ways that EPA and USDA can work together with our innovation grants programs to help provide technical/financial assistance to farmers?
4. **Are you working with NRCS to garner financial and technical assistance in helping to make this transition for MD Farmers?** Are you working with NRCS to solicit support for updating NMPs? Are you working with NRCS on approaches for drawing down P in high P soils – something that the NRCS 590 nutrient management standard requires? Have you talked to NRCS about promoting its “Alternative Use of Poultry Litter” program that was initiated in MD and DE several years ago? That program paid farmers NOT to land apply. The payment was used by farmers to buy the inorganic N they needed for crops. Perdue AgriRecycle would take the poultry litter at no charge to the grower for its pellet plant or for distribution to ag lands in need of additional P.

2014 – 2015:

1. **Implementation support for increased implementation:** “Consider new programmatic milestones to address implementation support and/or data tracking and reporting issues related to practices for which significant increases in implementation are anticipated, such as decision agriculture and livestock waste management systems.”
2. **Program needs for nutrient management:** “Consider new milestones to address programmatic needs that are likely to result from implementation of new nutrient management regulations, such as monitoring and/or enforcement staffing.”

Update 8/28: Other examples: milestones for updating NMPs to comply with new nutrient management regulations; livestock exclusion; manure incorporation; other practices for complying with the new PMT when it is finalized.

3. **Animal composting capacity:** “Consider a new programmatic milestone to increase capacity to handle greater animal composting demand. EPA notes that Maryland’s 2017 and 2025 milestones for poultry mortality composting are significantly lower than the 2013 milestone, but animal units are increasing with no anticipated change in mortality rates.”
4. **CAFO GP renewal:** “Consider a new programmatic milestone to renew the general discharge permit for Concentrated Animal Feeding Operations.”

Update 8/28: Under the new terms of the EPA-CBF settlement agreement, EPA will conduct an AFO review by the end of 2013. Ashley Toy is working on a proposal.

5. **NMP compliance:** “Consider programmatic milestones to increase nutrient management plan compliance.”
6. **Farm Bill budget reductions:** How will Maryland offset significant cuts to federal Farm Bill programs? Will the State increase its cost-share funding, or shift load reduction burdens to other sectors?

B. Urban/Suburban Stormwater

5/30/2013 IA: Improvements to Meet 2012-2013 Milestones and Maintain WIP Progress

1. **MS4 permits:** “Maryland has fallen behind the schedule for reissuing Phase I MS4 permits that was included in the Phase II WIP, but has submitted a revised schedule to EPA. EPA expects Maryland to accelerate progress in 2013 on the remaining Phase I and Phase II MS4 permits that have not yet been revised to implement the Bay TMDL, consistent with the revised schedule.”

Update 8/28: All Phase I MS4 permits have been submitted to EPA, but not SHA. Tentative Determinations issued for Baltimore City, PG County, Baltimore County and Anne Arundel County; EPA is waiting for TDs for the rest. PG County has provided more stringent language than earlier agreed to; MDE has not yet approved it. EPA expects that MDE will submit the SHA Phase I and the two Phase II general permits in September. EPA commends MDE for progress under the new schedule; now we are eager to see the final permits issued.

2. **Stormwater manual:** “EPA expects Maryland finalize its guidance document “Accounting for Stormwater Wasteload Allocations and Impervious Acres Treated” in 2013 in order to provide an enforceable basis for stormwater and construction permits.”
3. **BMP data:** “In conjunction with the pending BMP verification protocols, EPA expects Maryland to report BMP implementation on new development based on permit and compliance data with the “Environmental Site Design to the Maximum Extent Practicable” standard.”

Update 8/28: EPA commends MDE for their work to engage with federal facilities managers for pursuit of stormwater milestones.

2014 – 2015:

1. If the stormwater manual is not finalized in 2013, will it be a 2014 milestone?

2. Reissuance of the industrial and construction general permits should be included as milestones.
3. Maryland should include milestones to address any issues that result from the pending EPA Stormwater Assessment report.

C. Wastewater Treatment Plants and On-site Systems

5/30/2013 IA: Improvements to Meet 2012/2013 Milestones and Maintain WIP Progress

1. **Expired permits for significant:** “EPA expects Maryland to reissue the remaining four expired permits for significant treatment plants that need to incorporate Bay TMDL wasteload allocations.”

2014-2015:

1. Will there be a milestone for upgrades to minor WWTPs?
2. Will there be an interim milestone for on-site septic system?

III. Offsets and Trading

5/30/2013 IA: Improvements to Meet 2012-2013 Milestones and Maintain WIP Progress

- EPA appreciates Maryland’s efforts to complete their Accounting for Growth report.
1. **Response to EPA’s common recommendations:** “A response to the common recommendations that EPA made in its 2012 trading and offset program assessment is due to EPA by the end of 2013. EPA is issuing Technical Memoranda to assist with this response as well as guide development and implementation of trading and offsets programs.”
 2. **Initial demonstration:** “Maryland did not provide adequate information in its February 2013 response to EPA’s request for an initial demonstration that new loads are being identified, tracked and managed consistent with the Bay TMDL allocations, assumptions and Appendix S. Maryland provided additional information to EPA in May 2013 to supplement its initial submission. EPA is reviewing this supplement and will continue to work with Maryland on accounting for growth.”

Update 9/17: Maryland provided its numerical Sector Growth demonstration to EPA on August 29 and the Maryland Accounting for Growth (AfG) Workgroup report on August 23.

Questions for oversight discussion:

- Are there any new programmatic milestones that should be added to Maryland's 2014 – 2015 WIP milestones based on the AfG report and the 28 recommendations on which there was Workgroup consensus? For example:
 - Communication of the AfG program to local governments
 - Establishment of a Fee-in-Lieu
 - Enhancement of current approval process that streamlines additional/new BMPs available to reduce post-development load
 - Establishment of an approval process that streamlines additional/new BMPs available for credit generation
 - Establish third party review of aggregator practices

IV. Issues identified in Governor O'Malley's letter to Administrator McCarthy

- A. Development and use of scientifically credible and consistent procedures for assessing both point and nonpoint source sectors
- B. Expedite development and use of procedures to determine appropriate credits for agricultural and stormwater best management practices
- C. Use the best available data for land use acreages, agricultural farm animal populations, manure generation and septic systems